cemetery and made direct purchases outside of California totaling more than $3,000, was held by the Board to have committed unfair labor practices by threatening and discharging employees for exercising rights guaranteed by Section 7 of the National Labor Relations Act. The questions presented are:

1. Whether the operations of the corporation affected commerce, within the meaning of the Act, so as to give the Board jurisdiction.

2. Whether the Board abused its discretion in asserting its jurisdiction.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth in an Appendix to the Petition, pp. 2–4.

STATEMENT

Petitioner is the successor to, and has been substituted for, the Inglewood Park Cemetery Association (Pet. 1,n.) a California Corporation, which engaged in the operation of a cemetery located in Inglewood, California. From July 1, 1962, through June 30, 1963, petitioner received in excess of $500,000 from the sale to the public of services, burial lots, crypt spaces, and related items, and purchased goods directly from outside the State of California valued at $3,086.31. (Pet. App. 8, 27–28.)

On June 27, 1963, petitioner's foreman questioned employee John Dzavan, Jr., concerning his union activity and threatened to discharge any employee who

passed out union cards. (Pet. App. 9; Tr. 17–19.)[1] The next day petitioner's superintendent, at a meeting of all employees, told them that he would not have a union and would fight against it (Pet. App. 10; Tr. 19–20, 53, 69). After the meeting the superintendent discharged Dzavan and two other employees who had been instrumental in passing out union cards, as well as another employee closely associated with them. (Pet. App. 10; Tr. 21, 23, 44–45, 51, 54–55.)

Upon the foregoing facts, the Board, in agreement with the Trial Examiner, concluded that petitioner's cemetery business affected interstate commerce within the meaning of the Act, and that it would effectuate the policies of the Act to assert jurisdiction over that business (Pet. App. 5–6, 8, 14–16, 24). The Board further concluded that petitioner violated Section 8(a)(1) of the Act by interrogating and threatening its employees concerning their union activities, and Section 8(a) (3) and (1) by discharging the four employees because of their union or other protected activities (Pet. App. 5, 14, 16). The Board ordered petitioner to cease and desist from the unfair labor practices found, and to reinstate with back pay the employees it had discriminatorily discharged (Pet. App. 6, 17–19).

The court of appeals sustained the Board's findings and enforced the Board's order in its entirety (Pet. App. 22–26). No contention was made before the court that the Board's findings, aside from the jurisdictional finding, were improper (Pet. App. 26).

[1] "Tr." references are to the stenographic transcript, reproduced as Volume II, Transcript of Record, in the court below.

ARGUMENT

1. Section 10(a) of the Act states that the jurisdiction of the Board extends to any person "* * * engaging in any unfair labor practice * * * affecting commerce." This Court "has consistently declared that in passing the National Labor Relations Act, Congress intended to and did vest in the Board the fullest *jurisdictional* breadth constitutionally permissible under the Commerce Clause." *National Labor Relations Board* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224, 226. Hence, the Act applies even to local activity if it affects commerce among the several states. Moreover, "the operation of the Act [does not] depend on any particular volume of commerce affected more than that to which courts would apply the maxim *de minimis.*" *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 607; *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 684–685. And, as the court below recognized (Pet. App. 25), the Board may appropriately consider whether " 'the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce.' " *National Labor Relations Board* v. *Reliance Fuel Oil Corp., supra*, quoting from *Polish National Alliance* v. *National Labor Relations Board*, 322 U.S. 643, 648.

Under these principles, petitioner's cemetery business is subject to the Act as a matter of law, for a disruption of that business by a labor dispute would, at a minimum, tend to interfere with more than $3,000

of interstate purchases. Contrary to petitioner's contention (Pet. 16–20), this volume of commerce was not *de minimis*. "*De minimis* in the law has always been taken to mean trifles—matters of a few dollars or less." *National Labor Relations Board* v. *Suburban Lumber Co.*, 121 F. 2d 829, 832 (C.A. 3), certiorari denied, 314 U.S. 693. Annual purchases in interstate commerce which amount to more than $3,000 are not mere trifles. Moreover, the application of the *de minimis* standard by the court below here is consistent with other decisions under the Act. See *National Labor Relations Board* v. *Aurora City Lines, Inc.*, 299 F. 2d 229, 231 (C.A. 7); *National Labor Relations Board* v. *Stoller*, 207 F. 2d 305, 307 (C.A. 9), certiorari denied, 347 U.S. 919; cf. *National Labor Relations Board* v. *Holiday Hotel Management Co.*, 311 F. 2d 380, 381 (C.A. 10).[2]

2. Petitioner's further contention (Pet. 21–22) that the Board, in any event, should have declined to exercise jurisdiction over its operation likewise presents no issue warranting further review. The extent to which the Board asserts its legal jurisdiction, "is a

[2] The cases cited by petitioner (Pet. 19) do not deal with the assertion of the National Labor Relation Board's statutory jurisdiction. In *Pennsylvania Labor Relations Board* v. *Friedberg*, 395 Pa. 294, 148 A. 2d 909, appeal dismissed, 361 U.S. 2, the employer involved, unlike petitioner, would not have qualified under the Board's self-imposed jurisdictional standards (see p. 6, *infra*), and therefore the Pennsylvania court held that the state labor agency could assert jurisdiction. *Industrial Association of San Francisco* v. *United States*, 268 U.S. 64, an anti-trust case, dealt with employers involved in labor disputes prior to enactment of the National Labor Relations Act. See *United States* v. *Frankfort Distilleries*, 324 U.S. 293, 297.

matter of administrative policy within the discretion of the Board." *Lucas County Farm Bureau Cooperative Association* v. *National Labor Relations Board,* 289 F. 2d 844, 845–846 (C.A. 6), certiorari denied, 368 U.S. 823. Accord: *National Labor Relations Board* v. *W. B. Jones Lumber Co.,* 245 F. 2d 388, 391 (C.A. 9); *National Labor Relations Board* v. *Stoller, supra; National Labor Relations Board* v. *F. M. Reeves & Sons, Inc.,* 273 F. 2d 710, 712 (C.A. 10), certiorari denied, 366 U.S. 914. To guide it in exercising that discretion, the Board has established certain jurisdictional standards.[3] Since petitioner's cemetery business had a gross volume of at least $500,000, it satisfied the Board standard applicable to its operations. See *Carolina Supplies & Cement Co.,* 122 NLRB 88, 89. Nor does the Board's declination of jurisdiction over such operations as racetracks, hospitals, and real estate brokers (Pet. 21) establish that it was arbitrary in asserting jurisdiction over cemeteries. The Board could well conclude, as it has, that there are sufficient

[3] Section 14(c)(1) of the Act recognizes the Board's authority to do so. It reads as follows:

"The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction * * *."

differences between the former operations and cemeteries to warrant a different jurisdictional policy.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1966.

[4] The Board has consistently asserted its jurisdiction over all phases of the "business concerned with death" (Pet. App. 25). See *National Labor Relations Board* v. *Miscellaneous Drivers & Helpers Local 610*, 293 F. 2d 437, 440 (C.A. 8); *National Labor Relations Board* v. *Forest Lawn Memorial-Park*, 206 F. 2d 569, 571 (C.A. 9), certiorari denied, 347 U.S. 915; *W. W. Chambers Co.*, 124 NLRB 984, 985, enforced, 279 F. 2d 817 (C.A.D.C.).

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